



**MINUTES
FREMONT PLANNING COMMISSION
REGULAR MEETING OF AUGUST 8, 2002**

CALL TO ORDER: Chairperson Manuel called the meeting to order at 7:15 p.m.

PRESENT: Chairperson Manuel (left 9:45 p.m.), Commissioners Arneson, Cohen, Harrison, Wieckowski

ABSENT: Commissioners Thomas and Weaver

STAFF PRESENT: Dan Marks, City Planner
Christine Daniel, Senior Deputy City Attorney
Larissa Seto, Senior Deputy City Attorney
Mitch Moughon, Senior Civil Engineer
Andrew Russell, Associate Civil Engineer
Kathleen Livermore, Senior Planner
Avan Gangapuram, Associate Planner
Matt Foss, Planner I
Alice Malotte, Recording Clerk
Chavez Company, Remote Stenocaptioning
Walter Garcia, Video Technician

APPROVAL OF MINUTES: Regular Meeting of July 25, 2002 approved as submitted.

THE CONSENT LIST CONSISTED OF ITEM NUMBERS 5, 6, AND 7.

A SEPARATE VOTE WAS TAKEN FOR ITEM NUMBER 5, AS CHAIRPERSON MANUEL RECUSED HERSELF, BECAUSE SHE WAS A STOCKHOLDER IN SBC.

IT WAS MOVED (HARRISON/ARNESON) AND CARRIED BY THE FOLLOWING VOTE (4-0-0-2) THAT THE PLANNING COMMISSION TAKE THE FOLLOWING ACTION ON ITEM NUMBER 5.

Item 5. PG&E SUBSTATION WIRELESS FACILITY - 6453 Auto Mall Parkway - (PLN2002-00278) - to consider a Conditional Use Permit for a wireless telecommunications facility consisting of a pole with three screened panel antennas and three equipment cabinets in the Industrial Planning Area. This project is categorically exempt from CEQA review, per Section 15303, New Construction or Conversion of Small Structures.

HOLD PUBLIC HEARING.

AND

FIND PLN2002-00278 EXEMPT FROM CEQA REVIEW PER SECTION 15303, NEW CONSTRUCTION OR CONVERSION OF SMALL STRUCTURES;

AND

FIND PLN2002-00278 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S EXISTING GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN'S FUNDAMENTAL GOALS, LAND USE, AND NATURAL RESOURCES

CHAPTERS AS ENUMERATED WITHIN THE STAFF REPORT. THE PROJECT CONFORMS TO THE STANDARDS OF THE WIRELESS TELECOMMUNICATIONS ORDINANCE (NO. 2213);

AND

APPROVE PLN2002-00278, AS SHOWN ON EXHIBIT "A", SUBJECT TO FINDINGS AND CONDITIONS ON EXHIBIT "B".

The motion carried by the following vote:

AYES: 4 – Arneson, Cohen, Harrison, Wieckowski

NOES: 0

ABSTAIN: 0

ABSENT: 2 – Thomas, Weaver

IT WAS MOVED (HARRISON/WIECKOWSKI) AND UNANIMOUSLY CARRIED BY ALL PRESENT THAT THE PLANNING COMMISSION TAKE THE FOLLOWING ACTION ON ITEM NUMBERS 6 AND 7.

- Item 6. **KING AND LYONS - BAYSIDE BUSINESS PARK DEVELOPMENT AGREEMENT REVIEW (PLN2002-00332)** – to consider a City Manager's report on the annual review of the development agreement for property generally located westerly of Interstate 880, between Dixon Landing Road and the existing southerly terminus of Fremont Boulevard in the Industrial Planning Area. None of the conditions of CEQA Guidelines Section 15162 requiring additional environmental documents exist; the action is covered by EIR-89-56.

Vice Chairperson Arneson asked when Fremont Boulevard would be extended to Dixon Landing Road and MacCarthy Boulevard.

Senior Civil Engineer Moughon replied that the City was not certain at this time.

Commissioner Wieckowski stated that he understood that the endangered Salt Harvest Marsh Mouse population on the site had actually shown a recent increase.

City Planner Marks stated that he had not seen a study concerning the wildlife on the site.

HOLD PUBLIC HEARING

AND

FIND THE ANNUAL REVIEW OF THE DEVELOPMENT AGREEMENT IS NOT A PROJECT AS DEFINED IN CEQA GUIDELINES SECTION 15168 AND THAT NO FURTHER ENVIRONMENTAL DOCUMENT IS NEEDED FOR THIS REVIEW;

AND

FIND ON THE BASIS OF SUBSTANTIAL EVIDENCE THAT THE PROPERTY OWNER HAS COMPLIED IN GOOD FAITH WITH THE TERMS AND CONDITIONS OF THE DEVELOPMENT AGREEMENT FOR THE PERIOD UNDER REVIEW.

- Item 7. **CATELLUS DEVELOPMENT CORP. – PACIFIC COMMONS DEVELOPMENT AGREEMENT REVIEW (PLN2002-00338)** - to consider a City Manager's report on the annual review of the development agreement for property generally located westerly of Interstate 880 between Auto Mall Parkway and Cushing Parkway in the Industrial Planning Area. None of the conditions of CEQA Guidelines Section 15162 requiring additional environmental documents exist; the action is covered by Supplemental EIR 86-85, dated January 31, 2000 and April 14, 2000.

HOLD PUBLIC HEARING;

AND

FIND THE ANNUAL REVIEW OF THE DEVELOPMENT AGREEMENT IS NOT A PROJECT AS DEFINED IN CEQA GUIDELINES SECTION 15168 AND THAT NO FURTHER ENVIRONMENTAL DOCUMENT IS NEEDED FOR THIS REVIEW;

AND

FIND AND DETERMINE ON THE BASIS OF SUBSTANTIAL EVIDENCE IN THE RECORD OF THE PROCEEDINGS, THAT FOR THE REVIEW PERIOD OF 2001-2002, THE DEVELOPER HAS COMPLIED WITH ITS OBLIGATIONS UNDER THE 2000 AMENDED AND RESTATED DEVELOPMENT AGREEMENT BETWEEN THE CITY OF FREMONT AND CATELLUS DEVELOPMENT CORPORATION FOR THE PACIFIC COMMONS PROJECT.

The motion carried by the following vote:

AYES: 5 – Arneson, Cohen, Harrison, Manuel, Wieckowski

NOES: 0

ABSTAIN: 0

ABSENT: 2 – Thomas, Weaver

PUBLIC COMMUNICATIONS

ORAL COMMUNICATIONS - None

PUBLIC HEARING ITEMS

- Item 1. SHOESTRING P DISTRICT – 42151 Blacow Road – (PLN2002-00282)** – to consider a Rezoning from C-N zoning to Planned District zoning and to permit a neighborhood bar through a Planned District Minor Amendment at this location. The project is located in the Irvington Planning Area. This project is categorically exempt from CEQA review per Section 15303(c), New Construction or Conversion of Small Structures. (Continued from June 13, 2002.)

Mark Hirsch, representing the applicant, presented a petition that supported the rezoning. He reminded the Commission that this action was the result of litigation with the City regarding the legality of the outdoor patio. It was his position that the patio had been approved and was legal. A rezoning would allow for the legal use of the patio and add conditions that would have to be met. He passed photos of a new fence and exterior improvements and showed a site plan. Sound was the main issue and the new fence was erected in the hope of deflecting the noise that moved across the creek to neighbors' properties on Hamilton Way and Blacow Road from the parking lot. Four truckloads of abandoned appliances along the creek were removed, along with the garbage container, recycle bin, old barbecue pit, and old sign. The fence and building were painted. The patio area would be soundproofed with a sound-deadening, curtain-like material that would run along the back and side of the patio. A consultant was hired and his letter describing how the curtain-like material would be used was included in the Commissioners' packets. A consultant was also hired to advise about wireless speakers that would be placed on individual tables and would localize the sound to the people sitting at the tables, rather than broadcasting from the TV speakers. He promised that any sound problems in the future would be dealt with. Big O Tires agreed to allow patrons to use their property for parking, which should discourage parking on Blacow Road. Security personnel were currently policing the litter in the parking lot. All signage required and suggested by the Fire Department had been put up. They also had met with the Police Department to gain ideas about control of unruly patrons. Permits would be acquired for some smaller items. He acknowledged that patronage had increased since his clients bought the business.

However, it was a better environment than it was before they owned it. The bar had been there since the 1960s and would not close down, as some of the neighbors would like.

Chairperson Manuel opened the public hearing.

Errol Brotherton, 25-year Fremont resident, spoke in favor of the establishment stating that he had been patronizing it for 20 years. The new owners had already spent a lot of money to become a friendly neighbor and he believed that the noise problems could be overcome.

Veril R. Pearce, Fremont resident since 1964, spoke in favor of the Shoestring. The ability to sit in the patio by the creek and to look at the cranes made it "a real good place."

Jo Ann Perlewitz, local resident, spoke against the use of the patio for drinking and TV watching. The sports bar emphasis, the increase in patronage and increase in size, if the patio was to be allowed to be used by patrons, made this business equal to Daly's. If he were in a different area, such as Catellus, he would not have to spend his money on mitigations to keep the neighbors happy, but could use it to market his business. She was opposed to the increased numbers of people in the area. She expected that patrons waiting to get into the bar would wander up and down Blacow Road and buy liquor in one of the nearby liquor stores.

Randy Cothorn, local Blacow Road resident since 1977, also spoke against the rezoning. He passed copies of a letter he sent to the Planning Department. He stated that the bar had changed from a neighborhood, family bar to the current sports bar with most of the noise coming from the patio. He complimented the new owners on the cleanup of the area and he believed they were sincere. But their noisy sports bar with its increasing business was in the wrong place.

Laura McDondeld, Blacow Road resident, stated that parking in the Big O Tires parking lot would not solve the problem of parking in the nearby neighborhood. In her opinion, some patrons parked on Blacow Road to avoid being seen by the police as they left the bar. She suggested that a policeman should be located on Blacow Road. She knew the bar was nearby when she bought her home 17 years ago and had never issued a formal complaint, even when there were barbecues and the customers were noisy. She also complained that since someone urinated on her garage door and she admonished him, she had been burglarized and had experienced a peeping tom. She asked that the Commission turn the bar back into the small, neighborhood bar that the neighbors had always been able to live with.

Patricia Ernest stated that she brought her son, Matt, with her to emphasize that this was a family neighborhood. She was a former bartender and was not against bars. The problems were many and varied, as the bar was not a neighborhood bar any longer. She stated that she overheard co-workers in Pleasanton talking about "this great bar in Fremont called The Shoestring." The main concern was noise, along with undesirable elements, as mentioned by the previous speaker. Her family was not able to sit outside on their patio because of the noise and undesirable language that could be heard from the bar's patio. In her opinion, the changes made by the owners were only cosmetic. She asked that they be "reined in."

Joe Ernest, Hamilton Way resident and spouse of the former speaker pointed out that the property was already recognized by the City as nonconforming and read from the City ordinance, "it may not be added to or expanded." He wondered why there was any discussion. He agreed with the Planning Department recommendations. Build a proper building, if the bar was to be expanded or "make the patio a patio where the patrons may smoke or seek refuge, as they see fit." He did not believe a bar provided a public service or was an endangered species. He agreed that it was "nice to sip a long, cool drink on a sunlit

patio enjoying the peace, the quiet.” He stated that he was not able to do so on his patio nor sleep, because of the commotion from the bar. He also was not against bars, as he had managed a bar while in college, but was against the noise created by this sports bar. He doubted that the retractable sound covering would be consistently used and wondered how ventilation would be maintained without some kind of penetration in the cover. He believed the suggested sound deadening material circumvented City and construction codes at the expense of the neighborhood’s peace and quiet. He claimed that the new fence was constructed on two consecutive Sundays, “starting at first light,” contrary to the spirit of the condition that stated no construction was to be performed on Sundays.

Eugene Para, stated that the neighborhood just wanted to peacefully enjoy the quiet of their properties. He believed that the applicant was unable to control the noise and was unwilling to accept Condition 16A. He asked that the project be denied.

Luis Ramirez, Hamilton Way resident, stated that he was embarrassed when he had to close a window or move to the garage to speak on the telephone in the evening because of the noise. It was also embarrassing to explain the noise to visitors. It was hard to sleep when it sounded like loud people were in your room or your backyard.

Mr. Hirsch reiterated that the sound barrier would stop the sound from the patio. He stated that if nothing was worked out with the neighbors concerning the noise from the patio, he believed that the applicant could win the litigation with the City. The patio would then be a legally established patio (prior to later zoning changes) and would have no conditions that the applicants had to meet. He proposed that the conditions be mandated and allow the applicant to meet the conditions, which could be revoked if the neighbors had complaints. He acknowledged that it was difficult to control the patrons’ actions, such as parking in the neighborhood on Blacow Way. However, he promised that the applicants would do everything in their power to prevent the problems mentioned by the previous speakers.

Commissioner Cohen noted that the neighbors had legitimate complaints and seemed to have no opposition to a bar, but were opposed to the intensity of its use. The neighbors needed to understand that the bar would stay and the applicants needed to understand that they might not get their “dream bar.” He had hoped that the applicants would propose something closer to what the City and the neighbors were asking for. He suggested that building an enclosed building would solve most of the neighbors’ complaints.

Mr. Hirsch stated that enclosing the patio negated using it as a smoking area, which moved the smokers and the noise they would create outside. Walls of various materials had been discussed, but were not deemed to create as comfortable an environment as the sound-blocking material, which would cost approximately \$4,000. It had been used in to shield the noise from electrical facilities from neighbors and he believed that it would be very effective.

Commissioner Cohen suggested that if the Commission allowed the sound-deadening material to be used, it could be reviewed within 4 to 6 months. At that time, if the neighbors still had noise complaints, the Conditional Use Permit could be revoked.

Mr. Hirsch stated that the barrier would be used every day and if it did not work, the patio use would be limited by the applicants.

Vice Chairperson Arneson stated that many of the police calls seemed to involve the DJ and she suggested that he should be eliminated. The owner of the store next door to the bar wrote a letter that stated a room had been built behind his space that blocked his window. This seemed to be something recent. She wondered if the applicants were encouraging more patrons to come to their establishment than its occupancy legally allowed. She also wondered if the patrons who had too much to drink were being served, as some of the neighbors had commented on drunks being in the neighborhood.

Mr. Hirsch stated that a DJ had been used on a regular basis during the spring and was discontinued after the problems arose. The DJ was currently there approximately one night a week. The building that the next-door owner complained of was originally very old and was remodeled a few years ago. He agreed to take care of it by getting a permit for it or removing it. He agreed that the owners had used a broader approach in marketing the bar during the winter when the economy was slow. At this time, the owners were sponsoring three little league baseball teams, a Hispanic-based soccer team, two or three softball teams, along with a basketball team. This showed the applicants' commitment to the community. He stated that the managers and employees were in training to be more effective in controlling patrons who had reached their drinking capacity, as suggested by the Police Department.

Commissioner Wieckowski asked if Condition 18 that mandated that all the work to be completed in three months was practical. He noted that Condition 20 required that graffiti be removed within one week and repairs to sound barriers to be repaired within one month. He asked if Condition 16A, the fully enclosed patio, would trigger the installation of a sprinkler system and if the applicants' preferred alternative Condition 16C.

Mr. Hirsch thought that Condition 18 could be met. He stated that graffiti was removed within one day to discourage even more tagging. The mechanical aspect of the barrier would be simple, as it would weigh approximately ten pounds per linear foot and a hand crank would be used. Condition 16A would require the need to sprinkle the entire building (not just the portion in which the bar was located), perform seismic retrofits and involve a number of ADA issues, which would be staggering in cost. Condition 16C was the alternative that his clients preferred.

Commissioner Harrison announced, for the record, that he had met with Mr. Hirsch and asked how an insulation material that had ventilation or penetrations to allow for smoking could act as a sound barrier. What was the normal use for this material and what were the results? He asked if the applicants were willing to enclose the facility and install all of the safety devices at a heavy additional cost, if the acoustic material did not work.

Mr. Hirsch stated that the material would not have holes in it. It looked like a curtain that rippled upon itself, was four to six inches thick and was filled with an absorbent material. It would be open at the top. The material had been used near railroad stations to prevent sound from reaching nearby residents. It had also been used around electrical generation equipment to eliminate the vibration and hum from equipment from reaching a nearby residential area. It had also been used under equipment to eliminate vibrations and as a noise barrier for large electrical equipment, as formerly mentioned. The highest possible sound absorbent (the six-inch size) would be used. The alternative to using the sound deadening material had been thoroughly discussed and it was decided that they had to make the material work.

Chairperson Manuel closed the public hearing.

Commissioner Harrison asked about the litigation and how it concerned this project.

Senior City Attorney Daniel stated that, on the record, no agreement had been made with respect to any potential outcome. The applicant was afforded this opportunity to make this application with respect to curing the violations of the Fremont Municipal Code. The City Attorney's Office was confident that if the litigation went forward, the City would prevail, because the applicant had violated the Fremont Municipal Code.

Commissioner Wieckowski asked if code violations were found, would the use be terminated or would a fine be assessed, as part of the litigation. He asked if it was possible that the court would find that the patio was, in fact, preexisting.

Senior City Attorney Daniel stated that, at this time, the use was not allowed and that was why the applicants were before the commission. The action before the court involved fines that were imposed as a consequence of code enforcement action. She stated that the City was confident with its case.

Commissioner Harrison asked what would happen to the facility/structure that was currently in operation, if the Commission denied this application. He asked if the bar would continue to operate and the patio would be allowed for the smokers.

City Planner Marks stated that the Planning Commission's decision could go to City Council in any case. It could be appealed to Council and the final action would be made by the City Council. If the City Council did not approve the sound barrier enclosure, as proposed by the applicants, the patio could not be used as an extension of the bar. The television would have to be removed and the current activity would have to cease, which would be a matter for the enforcement staff. The bar was a legal, nonconforming use and the patio could be used as before, assuming appropriate building permits were obtained before it was built.

Commissioner Wieckowski asked Conditions 16A, B or C were the choices for the applicants.

City Planner Marks stated that it was up to the Commission to choose either A, B, or C.

Commissioner Cohen summarized that the bar was a legal, nonconforming use and the current function of the patio was an illegal use. The applicant was before the Commission as way to resolve the litigation, if the Commission agreed to rezone the area as a P-District. He asked if the bar and patio would be subject to conditional use.

City Planner Marks clarified that this rezoning would create a planned district, not a conditional use permit, and the conditions would be a part of the planned district.

Commissioner Cohen asked if the applicants did not abide by the conditions, would the consequences be the same as with a CUP and if that would be an advantage to the neighbors to stop the entire use, if the problems continued?

City Planner Marks stated that the Commission had the same authority with a planned district as with a CUP and could modify the planned district. He stated that he believed that the patio was built without permits and might be considered an expansion of the existing use. The patio might not be allowed.

Senior City Attorney Daniel stated that, in any event, substantial evidence had to be in the record to support the conclusion and she was not sure if the evidence would change. The long-standing interpretation of the zoning ordinance is that an otherwise conditional use in a planned district would be a minor amendment to the planned district and would be treated as a conditional use in the planned district. She asked if he was juxtaposing planned district versus the current situation.

Commissioner Cohen thought he was doing both. The patio was the problem with the legal, nonconforming use. If the patio were eliminated, the bar would not be subject to the mechanisms that conditional use permits provide, such as revocation, if the applicants were not fulfilling the conditions, one of which would be no excessive noise. He believed it would be more difficult to close the bar through nuisance proceedings than through the conditional use permit, which would allow more control over the bar and its noise.

Assistant City Attorney Seto agreed. However, practically, it was as difficult to revoke a CUP, because of the due process involved. It could still be challenged in Superior Court, which was a protracted legal process. Code enforcement could use monetary sanctions and violations could jeopardize their liquor license. Both were difficult ways to close down a business.

Vice Chairperson Arneson stated that, since this was a legal, nonconforming use that could not be expanded, she suggested choosing Condition 16A, which would allow the applicant to have a larger bar area and the neighbors would benefit by the enclosed area. She understood that special ventilation equipment could be installed in the potential new room that would eliminate the smoke.

Senior Deputy City Attorney Daniel stated that installing ventilation equipment to eliminate smoke was no longer under allowable State law, because employees would be subjected to second-hand smoke.

City Planner Marks believed that the applicant felt that the option was not financially feasible.

Commissioner Wieckowski made the motion to approve using the sound absorbent material with a one-year review.

Commissioner Harrison suggested a six-month review.

Commissioner Wieckowski agreed to any length of review that the Commission decided upon.

Vice Chairperson Arneson would not vote to support, because she did not believe the noise would be mitigated. She recalled the Commission requiring much more stringent conditions for another bar that was in a shopping center and not as close to the neighbors as this one was. She could not make Findings 7, Exhibit C or Finding 5, Exhibit D. She read, "Proposed use would not be detrimental to the general welfare of persons residing in the immediate vicinity and the neighborhood, because of the conditions to minimize any potential impacts." She could not make those findings, based on her visits to the area. Even with the patio enclosed, she doubted that the noise could be controlled. The neighbors' concerns needed to be considered.

Commissioner Wieckowski asked if she could find that "the proposed use would not be detrimental to the general welfare . . ." if it just operated as a bar and the patio was not used.

Vice Chairperson Arneson replied that she could make that finding if the doors were kept closed and the rules of occupancy were obeyed.

Commissioner Harrison agreed with one of the speakers that he would not want a bar next to his house, family or children. However, the bar would not go away and he believed a CUP would make a bad situation better, along with a six-month review. If the applicants did not conform with the conditions, they would have to enclose the patio and adhere to all of the accompanying requirements, which would not be financially feasible.

Commissioner Wieckowski amended the motion to reflect a review in May of 2003, which would be six months from completion of the conditions.

Senior City Attorney Daniel reminded the Commission that under Municipal Code 8-23105, a recommendation of a planned district rezoning to the City Council by the Planning

Commission required a minimum of four votes. She also asked the maker of the motion to make it clear that the planned district was being recommended to the City Council.

Commissioner Cohen suggested a condition that required that the owners would be responsible for policing patrons within the bar, within the patio area and within the vicinity outside the bar, which should address the specific concerns made by the neighbors.

Commissioner Wieckowski agreed.

Commissioner Harrison agreed as the second to the motion.

Chairperson Manuel asked if the nearby neighborhood had to be defined.

City Planner Marks suggested the maker of the amendment make the definition and be more specific as to the kinds of policing that would occur, specifically, in terms of specific actions that would be expected for the applicants and their employees to take.

Commissioner Cohen stated that they would be responsible for the noise emanating from patrons in the immediate vicinity of the bar, the patrons' physical activities that would disturb residents within vicinity, such as, urinating, defecating, spitting and other offensive conduct. If violations existed, the use would be terminated.

Senior City Attorney Daniel stated that if the intent of the suggested amendment was to create a condition that was enforceable as a provision for termination, defining the distance of the vicinity would be more helpful.

Commissioner Cohen suggested that 300 feet of the site might be appropriate, as it was the parameters used for noticing by the City.

Commissioner Harrison asked if there were problems in less than six months, would the use permit be removed.

City Planner Marks stated that if problems and concerns were made known to the City before six months, it would be brought back to the Commission. He noted that a six-month review did not make it any easier to modify the planned district. A review is just a review.

Chairperson Manuel suggested that monitoring should be discussed with the bar's security and the police, as 300 feet might not be sufficient.

Senior City Attorney Daniel suggested that staff could work with applicant and the police department to work out a definition of the appropriate vicinity prior to the action being heard by the City Council.

Commissioner Cohen agreed.

Commissioner Wieckowski agreed.

Chairperson Manuel asked if "an every six month review for the next five years" was practical. She wanted the neighborhood to feel some confidence that the City would actually be overseeing the situation.

City Planner Marks stated that staff would strongly recommend against that approach, which was onerous for staff and the applicant. He added that if ongoing complaints were received, it would be brought back to the Planning Commission without a specific schedule.

Commissioner Cohen stated that he tended to agree with Vice Chairperson Arneson but he did not feel her suggestion would solve the problem with the neighborhood. He could live with Condition 16C and stated that he still believed that the neighborhood would have more power in a planned district. If there were still problems in six months, he would not hesitate to take action that would send the applicants "down the drain."

Chairperson Manuel stated that she lived in a neighborhood that had several bars. She could not make Findings 4 and 5. She was not certain that Condition 16C was the way to make it better for the neighborhood. If the rest of the Commission supported Condition 16A, she would probably have voted in favor. Under these circumstances, she could not vote to support the rezoning to a planned district.

IT WAS MOVED (WIECKOWSKI/HARRISON) AND FAILED BY THE FOLLOWING VOTE (3-2-0-2) THAT THE PLANNING COMMISSION APPROVE CONDITION 16C;

AND,

RECOMMEND TO CITY COUNCIL A SIX-MONTH REVIEW PERIOD.

Senior City Attorney Daniel stated that an appeal could be filed with the City Clerk within ten days and advised the Commission that an alternate motion could be made.

The motion failed by the following vote:

AYES: 3– Cohen, Harrison, Wieckowski

NOES: 2 – Arneson, Manuel

ABSTAIN: 0

ABSENT: 2 – Thomas, Weaver

Item 2. TENTATIVE PARCEL MAP 7918 – 870 Yakima Drive – (PLN2002-00072) - to consider a previously approved but expired tentative parcel map for a subdivision of one parcel into two parcels located at 870 Yakima Drive in the Warm Springs Planning Area. This project is categorically exempt from CEQA review Section 15315, Minor Land Divisions. (Continued from July 11, 2002.)

Mark Piazza, owner's representative, requested approval for the expired tentative parcel map. He presented an updated site plan, a neighborhood analysis and four schemes, as requested by the Commission. He preferred Scheme 1 for approval; Scheme 2 allowed a partial circular driveway and minimized the street frontage; Scheme 3 was the least desirable with a shared driveway; and Scheme 4 had a flag lot. The requested lot split would conform to the size of the majority of the lots in the surrounding neighborhood.

Chairperson Manuel opened the public hearing

Vice Chairperson Arneson agreed that Scheme 1 was the most desirable, because it set the house farther back from the existing house and would make the front yard look more spacious and less crowded. She recommended that a more substantial front entry and balcony be designed for the house after the garage was relocated.

Mr. Piazza agreed to work with staff on a more acceptable design for the entryway.

Chairperson Manuel closed the public hearing.

Commissioner Wieckowski asked Vice Chairperson Arneson for her comments, as he knew she and Commissioner Thomas had many concerns about the placement of the house and how it would conform with the rest of Yakima Drive.

Vice Chairperson Arneson stated that moving the new house behind the original house would open up the front yard and made it workable. She could support this application.

IT WAS MOVED (WIECKOWSKI/COHEN) AND CARRIED BY THE FOLLOWING VOTE (5-0-0-0) THAT THE PLANNING COMMISSION HOLD PUBLIC HEARING;

AND

FIND THE PROPOSED PROJECT TO BE CATEGORICALLY EXEMPT FROM ENVIRONMENTAL REVIEW PER SECTION 15315 OF THE CEQA GUIDELINES;

AND

FIND PLN2002-00072 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S EXISTING GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN'S LAND USE CHAPTERS AS ENUMERATED WITHIN THE STAFF REPORT;

AND

APPROVE PLN2002-00072, SCHEME 1 AS SHOWN ON EXHIBIT "A", SUBJECT TO FINDINGS AND CONDITIONS ON EXHIBIT "B".

The motion carried by the following vote:

AYES: 5– Arneson, Cohen, Harrison, Manuel, Wieckowski

NOES: 0

ABSTAIN: 0

ABSENT: 2 – Thomas, Weaver

Item 3.

WALMART EIR COMMENTS - 3045 Skyway Court - (PLN2001-00290) – to receive oral and written comments from the public and the Planning Commission on the Fremont Wal-Mart Draft Environmental Impact Report (DEIR) (SCH #2001082059). The proposed project site is located in the Industrial Planning Area and would include construction of a Wal-Mart store (141,140 square feet) and Garden Center (14,512 square feet) on about 13.6 acres of a site. Public review period for the DEIR started on June 28, 2002 and ends on August 12, 2002.

Chairperson Manuel turned the meeting over to Vice Chairperson Arneson.

City Planner Marks announced that this item was specifically scheduled to receive comments on the DEIR, not on the project, itself. Comments could be made orally at this meeting or could be submitted until August 12th and the final EIR would respond to each individual point. The final EIR would then come before the Planning Commission in the future for comments on the project. He introduced Arlyn Purcell, Project Manager for the EIR and Avan Gangapuruom, Associate Planner.

Manager Purcell described the overall approach to choosing the current site. Phase I involved the construction of Wal*Mart and Phase II would consist of future development of the rest of the site. The DEIR looked at the impacts of both phases. Experts were consulted that concerned:

- Traffic modeling
- Health risk assessment to look at diesel exhaust impacts
- Applicant's hydrology study review

Ms. Purcell stated that the topics considered were:

- Land use and planning
A detailed analysis of consistency with the City of Fremont General Plan and with regional plans. The project would be consistent with all of the relevant General Plan policies, but could be inconsistent with the Bay Area Clean Air Plan.
- Transportation
 - Phase 1 LOS at Osgood Road and Auto Mall Parkway would change to LOS E during the P.M. peak hour

- When Phase 2 traffic was added, the LOS would stay at E with a small increase of the volume to capacity ratio
- Current autos traveling northbound on Osgood Road and waiting to turn left onto Auto Mall Parkway extended beyond the left turn pocket.
- Phase 1 would cause an increase in the line of cars
Mitigations would involve adding two left turn lanes and a right turn lane in the intersection and making the left turn pocket longer, which are in the process of already being implemented for another project
- Air quality
 - Construction dust emissions could reach PM10
Mitigation would be to implement all feasible measures, per Air District guidelines
 - During Phase 1 and 2 construction, traffic would create emissions of NOX that would exceed the Air District's significance threshold. This impact would continue to be significant after mitigation
Mitigation would involve transportation demand management measures to reduce vehicles going to and from site
- Hydrology and Water Quality
 - Less volume area would be available to hold flood waters. Some water could flow downstream and could possibly cause flooding to downstream properties.
Mitigation would fully compensate for the loss of the flood storage volume
 - Non-point source pollution impacts to water quality
Mitigation would include some onsite water treatment, but specific design features were unknown at this time.
- Geology
 - Erosion, unstable soils during construction and hazards related to expansive soils
Mitigation would be through standard techniques, such as erosion control plans and geotechnical recommendations
- Hazards
 - Due to past use of the site, during construction workers could be exposed to contaminated soil
Mitigation would include standard site assessment and remediation techniques.

Vice Chairperson Arneson opened the public hearing.

Tristan Stephan, resident with house in the flood zone, distributed a letter he received from URS, the company hired by the county to assess the flood zone. He worried that this project would jeopardize the ability to remove his residence from the flood zone. He believed that the traffic "was maxed out" at the project intersection and questioned how they would handle more automobiles. He noted that the BART stations were not addressed in the DEIR.

Preston Plaugher, resident since 1964, stated that he did not believe that two left-turn lanes and one right-turn lane would mitigate the increased traffic that would be created by Wal*Mart shoppers. He also did not believe that the pollution from the increased traffic could be mitigated. Extra activities that were usual in Wal*Mart parking lots, such as carnivals and motor home shows, would create traffic and air pollution. BART planned 7,000 parking spaces, which were expected to be filled to capacity on the day that the station opened in 2008. Therefore, unprecedented vehicle pollution could be expected from the BART station, the Pacific Commons project and the proposed Wal*Mart.

Nashua Kalil, BART representative, stated that the DEIR was incomplete and had inaccuracies. A response letter had been prepared and submitted to staff. She pointed out that the new BART station, just .4 miles away, was not shown on the consultants' maps. Construction start date was planned for this September. She encouraged all local entities in the community be consulted before the final EIR was brought before the Commission. The cumulative impacts had not been assessed and a completed mitigation plan needed to

include the wholistic effects in the area. The DEIR incorrectly stated that there was no possibility of General Plan changes. In her opinion, the project was a not transit-oriented development, although it could become that. The DEIR inaccuracies that should be reconsidered were:

- No impacts noted for bicycle and pedestrian access, as well as bus and other traffic along the street
- Two turn lanes would not be adequate
- Shuttle for employees would reduce trip generation. Trip generation estimate was inadequate and could be as much as 25% more than stated in the DEIR

Commissioner Wieckowski asked for comment on BART's perspective on the 2000 Clean Air Plan (CAP) that this project would impact.

Ms. Kalil stated that the proposed Wal*Mart did not fit the description of what the clean air plan stated the project should consist of, which was high density, mixed use developments near transit centers that reduced the need for commuting by personal vehicles. BART felt that it had a duty, as a partner, to bring this vision into play, as was being done in Irvington.

Commissioner Cohen asked if BART intended to submit additional writings regarding the EIR. He agreed that the DEIR was deficient and the transit-oriented village versus suburban sprawl must be chosen.

Ms. Kalil stated that BART was in the process of updating the SEIR.

Patricia Gordillo, Fremont resident since 1973, stated that she lived near the project site and used Auto Mall Parkway daily. She believed that Wal*Mart would generate more traffic than indicated in the DEIR. In her opinion, traffic congestion had significantly increased, even during the economic downturn. She read from an article in the Oakland Tribune that concerned the worst traffic areas as noted in the traffic study conducted by the City of Fremont. They all involved Auto Mall Parkway. The absence of the BART station and the cumulative traffic that was expected to be created around it was also noted in the article.

Vice Chairperson Arneson offered a copy of the document presented to the Commission by speaker Tristan Stephan for Ms. Purcell.

Commissioner Wieckowski highlighted conclusions reached by the DEIR:

Project Description 3.02 – Benefits to the City were employment opportunities and sales tax revenues – He asked for a discussion concerning the quality of employment opportunities

CUP 3.0-24 – He asked for a discussion that fleshed out allowing big truck, mobile home, carnival activity on the Wal*Mart site. He was concerned about the kind of community activity that would be allowed, such as voter registration.

Land Use and Planning 4.1-3 – He asked for a discussion concerning the 155,000 square feet of commercial space and if it would forego other opportunities and preclude other development in the area, thereby, producing adverse economic impacts.

Bay Area Quality Management District (BAQMD) 4.1-5 – He asked for more discussion concerning the 2000 Bay Area Clean Air Plan and asked for a statement that there would be no encouragement of urban sprawl, such as, the “typical Union Landing big box sprawl.”

Alameda Congestion Management Plan 4.1-17 – He asked for discussion regarding single occupancy auto goals not being reached or whether that impact could be further mitigated.

Transportation and Circulation – He asked for a detailed description of how this type of development affected the use of bicycles and on other projects in the area.

BAQMD 4.3-5 –More clarification was needed on how project emissions would impact air quality and how the City might avoid an increase in the NOX levels.

Commissioner Harrison noted that in **Fig. 4.1-1 Map of Nearby Land Uses**, Home Depot was not referenced in the graph on the next page and Fry's Electronics was mismarked. Concerning **Page 4.1-6 Approved and Pending Project Lists**, he asked what the JPI Apartments (the old golf course property) had to do with the Wal*Mart project.

Ms. Purcell stated that the map would be checked and corrected, if needed.

City Planner Marks stated that staff would respond to his question about the JPI Apartments in the written report.

Commissioner Cohen stated that the public speakers covered all of the subjects that he was interested in. His comments would be directed toward **Land Use and Planning, Summary Table, 4.1-2** that discussed the consistency of the project with the General Plan. The findings of the Planning Commission that listed numerous inconsistencies needed to be addressed more thoroughly. This draft document dismissed the Planning Commission's findings outright, other than stating that the City Council disagreed. He read parts of the DEIR that stated no economic studies had been prepared at the time of these findings. He did not believe that was true, as he recalled a speaker who presented a study based out of South San Francisco concerning the proposed Wal*Mart that was to be built there, but denied by the City. He understood that the Superior Court decision found the EIR deficient, which spoke to the general sense that the Planning Commission had about the document. He believed that the Planning Commission had more findings of inconsistency than were listed in the DEIR. He asked that the Planning Commission transcript of that meeting be reviewed for the statements that he made concerning findings of inconsistency so that it could be addressed at the next meeting.

Vice Chairperson Arneson agreed that Fry's Electronics was not in the right place on the **4.1-1 Nearby Land Use Plan**. BART must be shown, as it was very important to the area, along with Home depot. She also agreed that traffic volume on Auto Mall Parkway was understated and it needed to be double-checked.

City Planner Marks stated that the final EIR was scheduled to come back to the Commission about end of September.

Commissioner Harrison asked if the BART comments would be copied to the Commissioners.

City Planner Marks stated that they would be in the final EIR.

HOLD PUBLIC HEARING TO RECEIVE WRITTEN AND ORAL COMMENTS/TESTIMONY FROM PUBLIC AND PLANNING COMMISSION;

AND

REFER COMMENTS ON DRAFT EIR FROM PUBLIC AND PLANNING COMMISSION TO THE EIR CONSULTANT FOR RESPONSES TO BE INCLUDED INTO THE FINAL EIR.

- Item 4. WARM SPRINGS PLANNED DISTRICT – 49055 Warm Springs Boulevard – (PLN2002-00076)** – to consider a Preliminary and Precise Planned District and Preliminary Grading Plan for a 194-unit residential development located in the Warm Springs Planning Area. A Mitigated Negative Declaration was previously adopted with the General Plan Amendment for this project.

ADDITIONS/MODIFICATIONS TO STAFF REPORT:

Drainage: ...

Flood Control Channel Maintenance: The County of Alameda Public Works Agency, acting as the Alameda County Flood Control and Water Conservation District, has submitted a letter dated August 1, 2002, clarifying the required access requirements for maintenance of the flood control channel. According to the District's letter, in lieu of a fifteen-foot wide maintenance road adjacent to the channel that was previously required in the District's January 25, 2001 letter, the Developer can provide three 16-foot wide gates, provide access to these gates, and provide a maintenance access walkway between the channel and soundwall. The District has explained to City staff that the maintenance access walkway provides an area that District maintenance personnel can walk alongside the channel and perform visual channel inspections. The District's letter has been included as an informational enclosure

Public Comment: A letter from the Alameda County Flood Control and Water Conservation District, dated January 25, 2001 was received requesting certain access and design considerations be incorporated into the project. A supplemental letter, dated August 1, 2002, was received clarifying the District's requirements. See discussion under drainage for more information.~~The applicant and staff are currently reviewing design modifications to address flood control access along the northern edge of the project site.~~ No significant concerns were received by the City of Milpitas or residents at this time.

| | | |
|------------------|--------------------|--|
| Exhibits: | Exhibit "A" | Rezoning |
| | Exhibit "B" | Preliminary Landscape Plan, Preliminary Grading Plan, Precise Site Plan, Floor Plans, Elevations |
| | Exhibit "C" | Planned District Findings and Conditions of Approval |
| | Exhibit "D" | Preliminary Grading Plan Findings and Conditions of Approval |
| | Exhibit "E" | Revised Site Details |
| | <u>Exhibit "F"</u> | <u>Color Boards</u> |

RECOMMENDATION: ...

4. Find PLN2002-00076, as per Exhibit "B" (Preliminary Landscape Plan, Preliminary Grading Plan, Precise Site Plan, Floor Plans, Elevations), Exhibit "C" (Planned District Findings and Conditions of Approval), Exhibit "D" (Preliminary Grading Plan Findings and Conditions of Approval), and Exhibit "E" (Revised Site Details), and Exhibit "F" (Color Boards), fulfills the applicable requirements set forth in the Fremont Municipal Code.

ADDITIONS/MODIFICATIONS TO CONDITIONS OF APPROVAL:

- A-1 The project shall conform with Exhibit "B" (Preliminary Landscape Plan, Preliminary Grading Plan, Precise Site Plan, Floor Plans, Elevations), Exhibit "E" (Revised Site Details), and Exhibit "F" (Color Boards), and all conditions of approval set forth herein. The maximum number of units shall not exceed 194, and shall be generally distributed as shown in Exhibit "B".
- D-3 Planters for trees between garage doors along PVAWs shall measure no less than eight feet by 4 feet eight inches. In all other tree planting locations throughout the site, trees planters will be a minimum ~~six~~ five-feet wide. Additionally, adequate space to plant trees adjacent to buildings and paving must be provided in the following ways, subject to the review and approval of City Landscape Architecture staff during the DO process:
- a) Small trees (to 15-feet tall) no closer than six-feet from building;

- b) *Medium trees (to 30-feet tall) no closer than eight-feet from building;*
 - c) *Tall trees (above 30-feet tall) no closer than 15 feet from building; and*
 - d) *Adjacent to paving, trees shall be located in planters no smaller in width than 6-5 feet in any direction nor smaller than 48-50 square feet in total area, except for those tree planted along streets in planters no smaller than 8-feet (measured form face of curb to face of building) by 4-feet, 8-inches.*
- D-8 *All soundwalls shall be heavily landscaped on both sides. This may including-include vines, shrubs, and trees to minimize their visibility and to help prevent graffiti, subject to staff review during the DO process. At a minimum, the exterior side of the walls along the flood control channel and the railroad tracks shall be planted with vines.~~For the wall along Warm Springs Boulevard, this shall also include appropriate berming and/or mounding.~~*

PUBLIC HEARING

Mark Robson, Santa Clara Development, stated that the development would further the City's development plans and enhance the City as follows:

- Two kinds of affordable homes available within the development
- 50 Percent open space requirement exceeded
- 2.64 Parking spaces, exceeding parking requirements
- Views of hills available from homes
- \$2 million direct subsidies for housing provided by BMR
- Important gateway treatments on both sides of Warm Springs Boulevard
- Blighted area replaced with attractive, new neighborhood
- Pedestrian activities emphasized and autos and garages de-emphasized

Mr. Robson stated, however, that Condition D3, Planters, required specific planter dimensions for trees along PVAWs. It required that the planters be 8 feet by 4 feet 8 inches. He requested that some flexibility be allowed for the planting of trees in planters that would be 8 inches less in width and depth and where they would be placed. Smaller planters were used throughout the City. I.e., the Old School, and the trees seemed to be doing fine. He requested that the trees planted along the park homes and adjacent to the large open spaces be kept where they were along the sidewalk to help emphasize the connections that would bind the project together.

Chairperson Manuel opened the public hearing.

Vice Chairperson Arneson asked if the grade relationship on the pads between the garden homes and the condo complex to the south had been changed to eliminate the large discrepancy in height.

Mr. Robson answered that the grade was generally in conformance along the southern property line that abutted the City of Milpitas and the three-foot retaining wall at that end. It did drop down some at the southern part.

Chairperson Manuel closed the public hearing.

Commissioner Harrison asked staff to address the applicant's request for flexibility on Condition D3.

City Planner Marks stated that the landscape architect felt that the standard, as stated in Condition 3, was well below the normal standards. The planter size that the applicant suggested would be appropriate for small trees, but not the larger, more reasonably sized trees. In the City's experience, if the space was too small, eventually, the tree was taken out or incorrectly trimmed down. If the applicant wanted larger trees, he needed to accommodate them with larger planters. The same issue concerned the trees currently planted along the sidewalk. Not enough space was available for the number of proposed trees. Regarding the Old School site, it was obvious that the trees were going to be too large for the spaces they were planted in and, over time, would be a problem for City staff.

Commissioner Wieckowski complimented staff on the report, as it made it quite easy to refresh his recollection of comments made in the past.

City Planner Marks stated that Matt Foss, Planner I, wrote the staff report.

Vice Chairperson Arneson agreed with Commissioner Wieckowski's comment. The report was easy to follow. The development was well designed; the developer had made a sincere effort to listen to the comments made by the Commission and staff. She liked the 10 percent affordable housing element. She would support the project.

IT WAS MOVED (ARNESON/HARRISON) AND CARRIED BY THE FOLLOWING VOTE (5-0-0) THAT THE PLANNING COMMISSION

The motion carried by the following vote:

AYES: 5 – Arneson, Cohen, Harrison, Manuel, Wieckowski

NOES: 0

ABSTAIN: 0

ABSENT: 2 – Thomas, Weaver

MISCELLANEOUS ITEMS

Item 8. RAYMOND L. WONG - Highland Place - (PLN2000-00356) – to receive final plans of Minh & Tin Residence (formerly Hasha Dasegowda Residence) as an informational item approved on November 9, 2000.

Vice Chairperson Arneson thanked staff and stated that she appreciated the effort they had made concerning this item. Her only concern was that the house be sighted low enough that it was not too intrusive on Hunter Lane.

Information from Commission and Staff:

- Information from staff: Staff will report on matters of interest.

City Planner Marks announced that this was the final public meeting to be held in the old City Council chambers.

Commissioner Wieckowski asked if the same seating configuration would be moved to the new Capital Avenue chambers.

Senior City Attorney Daniel stated that the new seating was already in place and would be a similar configuration with movable seating.

Vice Chairperson Arneson asked if the Planning Commission would be given a tour before the first meeting in the new chambers.

Senior City Attorney Daniel stated that the move date for City staff was August 23rd and soon after that tours would be set up for a variety of interested people.

- Quarterly Update (Major Project Review)
- Information from Commission: Commission members may report on matters of interest.

Commissioner Harrison thanked staff for the project for update.

Vice Chairperson Arneson stated that on Adams Avenue, the railroad tracks ran along the street up to the top of the hill and were very close to the last house. She noticed that there was no fence to deter a child from walking up the hill to the tracks.

City Planner Marks promised to check on her concern.

Meeting adjourned at 10:10 p.m.

SUBMITTED BY:

APPROVED BY:

Alice Malotte
Recording Clerk

Dan Marks, Secretary
Planning Commission